



General Assembly

January Session, 2007

***Amendment***

LCO No. 6633

**\*SB0005806633SD0\***

Offered by:  
SEN. CRISCO, 17<sup>th</sup> Dist.

To: Subst. Senate Bill No. 58

File No. 24

Cal. No. 114

***"AN ACT CONCERNING CAPTIVE INSURANCE COMPANIES."***

1 Change the effective dates of sections 1 to 20, inclusive, to "Effective  
2 January 1, 2009"

3 In line 23, after "group" insert "that is domiciled in this state and"

4 Strike sections 8 and 9 in their entirety and substitute the following  
5 in lieu thereof:

6 "Sec. 8. (NEW) (*Effective January 1, 2009*) (a) At least once every five  
7 years, and additionally whenever the Insurance Commissioner  
8 determines it to be prudent, the commissioner, or the commissioner's  
9 designee, shall visit each captive insurance company and thoroughly  
10 inspect and examine its affairs to ascertain its financial condition, its  
11 ability to fulfill its obligations and whether it has complied with the  
12 provisions of sections 1 to 18, inclusive, of this act and any applicable  
13 provisions of title 38a of the general statutes.

14 (b) In scheduling and determining the nature, scope and frequency

15 of such examinations, the commissioner shall consider such matters as  
16 the results of financial statement analyses and ratios, changes in  
17 management or ownership, actuarial opinions, reports of independent  
18 certified public accountants and such other criteria as set forth in the  
19 examiners' handbook adopted by the National Association of  
20 Insurance Commissioners and in effect at the time the commissioner  
21 exercises discretion under this section.

22 (c) (1) To carry out examinations under this section, the  
23 commissioner may appoint as examiners one or more competent  
24 persons, not officers of or connected with or interested in any  
25 insurance company, other than as a policyholder. The commissioner  
26 may engage the services of attorneys, appraisers, independent  
27 actuaries, independent certified public accountants or other  
28 professionals and specialists to assist in conducting the examinations  
29 under this section as examiners, the cost of which shall be borne by the  
30 company which is the subject of the examination. Notwithstanding the  
31 provisions of this subdivision, no domestic captive insurance company  
32 subject to examination under this section shall pay as costs associated  
33 with the examination the salaries, fringe benefits, traveling and  
34 maintenance expenses of examining personnel of the Insurance  
35 Department engaged in such examination if such domestic company is  
36 otherwise liable to assessment levied under section 38a-47 of the  
37 general statutes, except that such company shall pay the traveling and  
38 maintenance expenses of examining personnel of the department when  
39 such company is examined outside the state.

40 (2) In conducting the examination, the commissioner, the  
41 commissioner's actuary or any examiner authorized by the  
42 commissioner may examine, under oath, the officers and agents of  
43 such a company and all persons deemed to have material information  
44 regarding the company's property or business. Each such company, its  
45 officers and agents shall produce the books and papers, in its or their  
46 possession, relating to its business or affairs, and any other person may  
47 be required to produce any book or paper, in his custody, deemed to  
48 be relevant to such examination, for the inspection of the

49 commissioner, the commissioner's actuary or examiners, when  
50 required. The officers and agents of the company shall facilitate the  
51 examination and aid the examiners in making the same so far as it is in  
52 their power to do so. The refusal of any company, by its officers,  
53 directors, employees or agents, to submit to examination or to comply  
54 with any reasonable written request of the examiners shall be grounds  
55 for suspension of, or refusal of or nonrenewal of any license or  
56 authority held by the company to engage in an insurance or other  
57 business subject to the commissioner's jurisdiction. Any such  
58 proceedings for suspension, revocation or refusal of any license or  
59 authority shall be conducted pursuant to section 9 of this act.

60 (3) In conducting the examination, the examiner shall observe those  
61 guidelines and procedures set forth in the examiners' handbook  
62 adopted by the National Association of Insurance Commissioners. The  
63 commissioner may also adopt such other guidelines or procedures as  
64 the commissioner may deem appropriate.

65 (d) (1) Nothing contained in this section shall be construed to limit  
66 the commissioner's authority to terminate or suspend any examination  
67 in order to pursue legal or regulatory action pursuant to the insurance  
68 laws of this state. Findings of fact and conclusions made pursuant to  
69 any examination shall be prima facie evidence in any legal or  
70 regulatory action.

71 (2) Nothing contained in this section shall be construed to limit the  
72 commissioner's authority in such legal or regulatory action to use and,  
73 if appropriate, to make public any final or preliminary examination  
74 report, any examiner or company workpapers or other documents, or  
75 any other information discovered or developed during the course of  
76 any examination.

77 (3) Not later than sixty days after completion of the examination, the  
78 examiner in charge shall file, under oath, with the Insurance  
79 Department a verified written report of examination. Upon receipt of  
80 the verified report, the Insurance Department shall transmit the report

81 to the company examined, together with a notice which shall afford  
82 the company examined a reasonable opportunity, not to exceed thirty  
83 days, to make a written submission or rebuttal with respect to any  
84 matters contained in the examination report. Not later than thirty days  
85 after the period allowed for the receipt of written submissions or  
86 rebuttals, the commissioner shall fully consider and review the report,  
87 together with any written submissions or rebuttals and any relevant  
88 portions of the examiner's workpapers and enter an order: (A)  
89 Adopting the examination report as filed or with modification or  
90 corrections. If the examination report reveals that the company is  
91 operating in violation of any law, regulation or prior order of the  
92 commissioner, the commissioner may order the company to take any  
93 action the commissioner considers necessary and appropriate to cure  
94 such violation; or (B) rejecting the examination report with directions  
95 to the examiners to reopen the examination for purposes of obtaining  
96 additional data, documentation or information, and refiling pursuant  
97 to subparagraph (A) of this subdivision; or (C) calling for an  
98 investigatory hearing with no less than twenty days notice to the  
99 company for purposes of obtaining additional documentation, data,  
100 information and testimony.

101 (e) (1) All orders entered pursuant to subdivision (3) of subsection  
102 (d) of this section shall be accompanied by findings and conclusions  
103 resulting from the commissioner's consideration and review of the  
104 examination report, relevant examiner workpapers and any written  
105 submissions or rebuttals. The findings and conclusions, which form  
106 the basis of any such order of the commissioner, shall be subject to  
107 review as provided in section 38a-19 of the general statutes.

108 (2) Any investigatory hearing conducted under subparagraph (C) of  
109 subdivision (3) of subsection (d) of this section by the commissioner or  
110 authorized representative, shall be conducted as a nonadversarial  
111 confidential investigatory proceeding as necessary for the resolution of  
112 any inconsistencies, discrepancies or disputed issues apparent (A)  
113 upon the filed examination report, (B) raised by or as a result of the  
114 commissioner's review of relevant workpapers, or (C) by the written

115 submission or rebuttal of the company. Not later than twenty days  
116 after conclusions of any such hearing, the commissioner shall enter an  
117 order pursuant to subparagraph (A) of subdivision (3) of subsection  
118 (d) of this section. The commissioner shall not appoint an examiner as  
119 an authorized representative to conduct the hearing. The hearing shall  
120 proceed expeditiously with discovery by the company limited to the  
121 examiner's workpapers which tend to substantiate any assertions set  
122 forth in any written submission or rebuttal. The commissioner or the  
123 commissioner's authorized representative may issue subpoenas for the  
124 attendance of any witnesses or the production of any documents  
125 deemed relevant to the investigation whether under the control of the  
126 department, the company or other persons. The documents produced  
127 shall be included in the record and testimony taken by the  
128 commissioner or the commissioner's authorized representative shall be  
129 under oath and preserved for the record. Nothing contained in this  
130 section shall require the department to disclose any information or  
131 records which would indicate or show the existence or content of any  
132 investigation or activity of a criminal justice agency. The hearing shall  
133 proceed with the commissioner or the commissioner's authorized  
134 representative posing questions to the persons subpoenaed. Thereafter  
135 the company and the Insurance Department may present testimony  
136 relevant to the investigation. Cross-examination shall be conducted  
137 only by the commissioner or the commissioner's authorized  
138 representative. The company and the Insurance Department shall be  
139 permitted to make closing statements and may be represented by  
140 counsel of their choice.

141 (f) The commissioner may, if the commissioner's deems it in the  
142 public interest, publish any such report, or the result of any such  
143 examination contained in such report, in one or more newspapers of  
144 the state.

145 (g) Nothing contained in this section shall prevent or be construed  
146 as prohibiting the commissioner from disclosing the content of an  
147 examination report, preliminary examination report or results, or any  
148 matter relating to such report, to the Insurance Department of this or

149 any other state or country, or to law enforcement officials of this or any  
150 other state or to any agency of the federal government at any time,  
151 unless such agency or office receiving the report or matters relating to  
152 such report agrees, in writing, that such documents shall be  
153 confidential.

154 (h) All working papers, recorded information, documents and  
155 copies thereof produced by, obtained by or disclosed to the  
156 commissioner or any other person in the course of an examination  
157 made under this section shall be confidential, shall not be subject to  
158 subpoena and shall not be made public by the commissioner or any  
159 other person, except to the extent provided in subsection (g) of this  
160 section. Access to such information may be granted by the  
161 commissioner to the National Association of Insurance  
162 Commissioners, unless it agrees, in writing, that such information shall  
163 be confidential.

164 (i) (1) The commissioner may engage the services of, from time to  
165 time, on an individual basis, qualified actuaries, certified public  
166 accountants or other similar individuals who are independently  
167 practicing their professions, even though said persons may, from time  
168 to time, be similarly employed or retained by persons subject to  
169 examination under this section.

170 (2) No cause of action shall arise nor shall any liability be imposed  
171 against the commissioner, the commissioner's authorized  
172 representatives or any examiner appointed by the commissioner for  
173 any statements made or conduct performed in good faith while  
174 carrying out the provisions of this section.

175 (3) No cause of action shall arise, nor shall any liability be imposed  
176 against any person for the act of communicating or delivering  
177 information or data to the commissioner or the commissioner's  
178 authorized representative examiner pursuant to an examination made  
179 under this section, if such act of communication or delivery was  
180 performed in good faith and without fraudulent intent or the intent to

181 deceive.

182 (4) This section does not abrogate or modify in any way any  
183 common law or statutory privilege or immunity heretofore enjoyed by  
184 any person identified in subdivision (2) of this subsection.

185 (5) A person identified in subdivision (2) of this subsection shall be  
186 entitled to an award of attorney's fees and costs if he is the prevailing  
187 party in a civil cause of action for libel, slander or any other relevant  
188 tort arising out of activities in carrying out the provisions of this  
189 section and the party bringing the action was not substantially justified  
190 in doing so. For purposes of this section, a proceeding is "substantially  
191 justified" if it had a reasonable basis in law or fact at the time that it  
192 was initiated.

193 Sec. 9. (NEW) (*Effective January 1, 2009*) (a) The commissioner may,  
194 at any time, for cause, suspend, revoke or refuse to renew any license  
195 of a captive insurance company or in lieu of or in addition to  
196 suspension or revocation of such license the commissioner, after  
197 reasonable notice to and hearing of any holder of such license, may  
198 impose a fine not to exceed ten thousand dollars. Such hearings may  
199 be held by the commissioner or any person designated by the  
200 commissioner.

201 (b) Any captive insurance company aggrieved by the action of the  
202 commissioner in suspending, revoking, or refusing to renew a license  
203 or in imposing a fine may appeal therefrom, in accordance with the  
204 provisions of section 4-183 of the general statutes, except venue for  
205 such appeal shall be in the judicial district of New Britain. Appeals  
206 under this section shall be privileged in respect to the order of trial  
207 assignment."

208 Strike lines 523 to 526, inclusive, in their entirety and reletter the  
209 remaining subsection accordingly

210 Strike section 15 in its entirety and substitute the following in lieu  
211 thereof:

212 "Sec. 15. (NEW) (*Effective January 1, 2009*) Unless otherwise provided  
213 in sections 1 to 18, inclusive, of this act, no provision of title 38a of the  
214 general statutes shall apply to captive insurance companies, unless  
215 expressly included therein, except for the following: Sections 38a-16,  
216 38a-17, 38a-54, 38a-55, 38a-56, 38a-57, 38a-59, 38a-69a, sections 38a-250  
217 to 38a-266, inclusive, sections 38a-903 to 38a-961, inclusive, and  
218 sections 38a-962 to 38a-962j, inclusive, of the general statutes."

219 Strike section 16 in its entirety and renumber the remaining sections  
220 and internal references accordingly